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AK FUTURES LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AK FUTURES LLC,
Plaintiff,

v.

TBH SUPPLY LLC, a California
limited liability company; GOLDEN
PHOENIX HOLDINGS, a Nevada
corporation; JASON ANTHONY
LONGO, a California resident; JOHN
ANTHONY MAGLIANA, JR., an
Oregon resident and California attorney;
JOHN MAGLIANA, III, a California
resident; ATLAS HEMP COMPANY
LLC, a Washington corporation; and
DOES 1-10,

Defendants.

CASE NO. 8:23-cv-01030

RELATED CASES:

No. 8:21-cv-1027-JVS-ADS

No. 8:21-cv-1028-JVS-ADS

No. 8:21-cv-1061-JVS-ADS

No. 8:21-cv-1154-JVS-ADS

No. 8:21-cv-2121-JVS-ADS

COMPLAINT FOR:

**(1) FEDERAL UNFAIR
COMPETITION AND FALSE
DESIGNATION OF ORIGIN,
15 U.S.C. § 1125(A);**

**(2) CALIFORNIA FALSE
ADVERTISING, CAL. BUS. &
PROF. CODE § 17500 ET SEQ;**

**(3) CALIFORNIA UNFAIR
COMPETITION, CAL. BUS. &
PROF. CODE § 17200 ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff AK Futures LLC (“AKF”), for its complaint against defendants
2 TBH Supply LLC, Golden Phoenix Holdings, Jason Anthony Longo, John Anthony
3 Magliana, Jr., John Magliana III, and Does 1-10 (“**Defendants**”), alleges:

4 **PRELIMINARY STATEMENT**

5 1. This is an action against Defendants for the willful infringement of
6 plaintiff AKF’s intellectual property rights in its popular Cake™ brand of hemp
7 derivative Delta-8 products. Defendants are unlawfully manufacturing, importing,
8 advertising, marketing, selling, and distributing unauthorized, inauthentic, and
9 infringing products that attempt to replicate or are confusing similar to AKF’s
10 authentic products. Defendants’ products are of unknown quality and contain high
11 concentrations of the psychoactive Delta-9 THC-tetrahydrocannabinol (“THC”)
12 compound and have been the target of law enforcement raids and proceedings. The
13 marketing and sale of these unlawful products under a mark that incorporates and is
14 confusingly similar to AKF’s Cake™ mark threaten substantial, irreparable harm to
15 AKF’s brand as well as to consumers, who purchase Defendants’ products
16 wrongfully believing them to have been made and approved by AKF.

17 2. Plaintiff is the owner and authorized seller of Cake™ branded Delta-8
18 products, including disposable electronic delivery systems and electronic cigarette
19 liquid (“e-liquid”). Delta-8 is a hemp-derived product with less than 0.3% of the
20 psychoactive Delta-9 THC compound and so it is permitted to be sold in interstate
21 commerce under the 2018 Farm Bill. The safety and efficacy of Delta-8 vaping
22 products are regulated under the PACT Act and other rules and regulations. AKF’s
23 Cake™ brand is the top-selling brand of Delta-8 vaping goods in the United States.
24 It is carefully tested and lawfully manufactured under patented processes and
25 expensive quality controls.

26 3. Plaintiff AKF holds the intellectual property rights in its popular
27 Cake™ brand of hemp derivative Delta-8 products (“**Cake™ branded Delta-8**
28 **products**”). Given the popularity and consumer recognition of Cake™ branded

1 Delta-8 products, significant demand for them exists in the U.S. market.

2 Unfortunately, bad actors such as Defendants are creating inauthentic goods that are
3 confusingly similar to AKF's Cake™ marks, and unlawfully trading on AKF's
4 brand and the goodwill AKF has developed in its designs, marks, logos, products,
5 processes and expensive quality controls.

6 4. Defendants manufacture, sell, or otherwise distribute unauthorized
7 products under the under the brand name "Cake She Hits Different" and by use the
8 "Cake" mark and branding. The products being manufactured, sold, or otherwise
9 distributed by Defendants are of unknown or inferior quality to AKF's authentic
10 product, and threaten immeasurable harm to AKF's brand and customer good will.
11 Accordingly, AKF brings this action to protect its brand and consumers from
12 Defendants' infringing products.

13 PARTIES

14 5. Plaintiff AKF is a limited liability company organized and existing
15 under the laws of Delaware with its principal place of business in California located
16 at 1007 West Grove Avenue, Suite B, Orange, California 92865. AKF is the owner
17 and rights-holder to its Cake™ marks and related intellectual property.

18 6. Defendant TBH Supply LLC ("**TBH**"), is a California limited liability
19 company organized on November 19, 2021, with a principal place of business
20 located at 31719 Coast Hwy, Laguna Beach, CA 92651. Defendant Golden
21 Phoenix Holdings, Inc. ("**Golden Phoenix**"), is a Nevada corporation organized on
22 November 18, 2021. Golden Phoenix serves as the Managing Member of TBH.
23 Defendants' "Cake She Hits Different" branded vaping devices are more fully
24 described in sections below.

25 7. Defendant Jason Anthony Longo ("**Longo**") resides in California and
26 is associated with an address at 31719 Coast Highway, Laguna Beach, CA 92651,
27 where TBH maintains its principal business address. Defendant John Anthony
28 Magliana, Jr. ("**Magliana**") is an attorney licensed to practice law in California and

1 Oregon, and maintains an office address located at 3600 Lakeview Blvd., Lake
2 Oswego, OR 97035. Defendants Magliana and Longo are the owners and operators
3 of Defendants TBH and Golden Phoenix, and are shareholders and directors of
4 Golden Phoenix.

5 8. Defendant John Magliana III (“**Magliana III**”) is Magliana’s son and
6 is associated with Golden Phoenix and TBH. Magliana III pled guilty to a felony
7 charge of possession with intent to distribute marijuana in connection with a multi-
8 state illicit marijuana ring. One of the backbone ingredients of the “Cake She Hits
9 Different” consumer product is black-market marijuana grown without a license
10 and, on information and belief, sold without paying applicable taxes.

11 9. Defendants TBH, Golden Phoenix, Longo, Magliana and Magliana III
12 are referred to as the “**TBH Defendants**”. The TBH Defendants’ cannabis business
13 is importing, manufacturing, advertising, selling, and distributing disposable vaping
14 devices containing concentrated Delta-9 THC oils derived from black-market
15 marijuana flowers under the brand name, “Cake She Hits Different”. Nicotine is
16 often added to create an electronic nicotine delivery system (“ENDS”) product in
17 violation of FDA requirements.

18 10. Defendant Atlas Hemp Company LLC (“**Atlas Hemp**”) is a
19 Washington limited liability company organized on April 18, 2016, with a principal
20 place of business located at 1201 Monster Rd SW, Suite 250, Renton, WA 98057.

21 11. Defendants Does 1-10 are unknown manufacturers, importers,
22 suppliers to, or agents of the named defendants, or are additional distributors, re-
23 sellers or retailers. Does 1-10 are residents of, or will be present in, the State of
24 California and this Judicial District or have transacted business in the State of
25 California during the time-period covered by this complaint and are subject to the
26 jurisdiction of this Court. The identities and roles played by Does 1-10 are not
27 currently known. AKF will amend its complaint to include the name or names of
28 said persons or entities when that information becomes available.

12. Plaintiff is informed and believes each Defendant was the agent and alter ego of the other Defendants, at all relevant times alleged herein, and committed the acts or omissions described below with each of the other Defendants' actual and apparent authorization, approval, ratification and direction.

JURISDICTION AND VENUE

13. This is an action for federal unfair competition and false designation of origin, 15 U.S.C. § 1125(a); for violations of California's false advertising law, Cal. Bus. & Prof. Code § 17500 *et seq.*, and California's unfair competition law, Cal. Bus. & Prof. Code § 17200 *et seq.*

14. This Court has jurisdiction over AKF's federal claim pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). Jurisdiction for the related state-law claims is based upon 28 U.S.C. §§ 1338(b) and 1367.

15. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(a). Defendants are subject to suit in this Judicial District by virtue of their commercial activities, sales, and residence in this Judicial District. Venue in also is proper because a substantial part of the events giving rise to the claims in this action occurred in this Judicial District. AKF has its principal place of business in this Judicial District.

STATEMENT OF FACTS

A. THE COMMERCIAL SUCCESS OF PLAINTIFF'S CAKE™ PRODUCTS

16. AKF's Cake™ brand is recognized as the market leader in high-quality hemp-derived Delta-8 vaping products.

17. Prior to launching Cake™, AKF's co-founder James Clelland launched and operated other very successful brands in the vaping industry. An artist, designer, and experienced marketer, Clelland's interest in vaping products began with a desire to quit smoking cigarettes. By the age of 28, Clelland developed his first successful e-cigarette brand called "Dotmod." Dotmod's sales

grew to approximately \$20 million annually utilizing Clelland's designs and logos, and grassroots or "viral" social media marketing. His passion, hard work and distinctive designs and formats contribute to the success and popularity of AKF's brands.

18. AKF launched the Cake™ branded Delta-8 products at the CHAMPS Trade Show in Orlando, Florida in October 2020. Cake™ products stood out through its appealing branding and high-quality disposable product. Demand for Cake™ products has been overwhelming. During 2022, revenue from sales of authentic Cake™ branded Delta-8 products in the U.S. market exceeded \$100 million dollars.

19. By virtue of Cake™ products' marketplace success, AKF has established substantial and widespread consumer goodwill in the Cake™ mark, trade name, and designs. Consumers of Cake™ products associate AKF's marks and designs with high-quality, innovative and well-tested products.




20. AKF takes seriously its intellectual property rights in the Cake™ brand and actively polices them.

B. PLAINTIFF'S TRADEMARK RIGHTS IN CAKE™

21. AKF has established trademark rights including designation of origin and trade dress in its "Cake" mark, its copyrighted "Cake" design logo, stylized "Cake" lettering, and unique product packaging.

22. AKF has pending applications for registration of the Cake™ marks before the United States Patent and Trademark Office, for use in connection with electronic cigarettes, electronic cigarette refill liquids and cartridges, electronic cigarette batteries, and electronic cigarette chargers, including as follows:

| MARK | DATE OF APPLICATION | U.S. SERIAL NUMBER |
|------|---------------------|----------------------|
| CAKE | DECEMBER 21, 2020 | 90399839 (CLASS 034) |

| | | | |
|----|---|---------------------------------|--|
| 1 | CAKED | MARCH 17, 2021 | 90584363 (CLASS 034) |
| 2 | CAKED8 | MARCH 17, 2021 | 90584410 (CLASS 034) |
| 3 |  | MARCH 22, 2021 May 2, 2021 | 90594523 (CLASS 034) 90686598 (Class 009) |
| 5 |  | MARCH 22, 2021 April 5, 2021 | 90594382 (CLASS 034) 90624745 (Class 009) |
| 8 | EAT CAKE | MARCH 25, 2021 | 90603633 (CLASSES 009 AND 034) |
| 10 |  | AUGUST 16, 2021 | 90885204 (CLASS 034) |
| 13 | CAKE 10 10 | JUNE 29, 2021 | 90801941 (CLASS 034) |
| 14 | EAT CAKE | MARCH 25, 2021 | 90603633 (CLASSES 009 AND 034) |

23. AKF currently owns registrations of its “Cake” stylized trademark and design logo trademark issued by China, Mexico, Russia and Australia. AKF’s design logo trademark bears China Registration No. 55058687 and International Registration No. 1604339 with grants of protection by designee countries Russia and Australia; and AKF’s “Cake” stylized trademark bears Mexico Registration No. 2574865.

24. AKF also owns pending trademark applications for registrations of its “Cake” stylized mark and design logo mark in Canada, the European Union, Hong Kong, Vietnam, Brazil, Switzerland, Columbia, Indonesia, Israel, Korea, Japan, Malaysia, Norway, New Zealand, Philippines, Singapore, and Thailand.

25. Since at least October 23, 2020, AKF has continuously used one or more of the marks on its products in commerce. To this day, all of AKF’s Cake™

products bear one or more of the Cake marks identified above.

26. The Cake marks are distinctive and serve solely to identify and promote AKF's genuine products and well-known brand.

27. AKF has spent substantial time, money, and effort in developing consumer recognition and awareness of its brand.

28. AKF sells its products only through WM Wholesale and its network of authorized distributors.

29. Through its predecessors' and its licensees' widespread and substantially exclusive use of the Cake™ mark and related marks, AKF also owns significant common law rights in the marks, which are not limited to the goods or services for which the marks are pending registration. Examples include:



(Authentic Cake™ Products)

C. DEFENDANTS' INFRINGING AND UNLAWFUL DISTRIBUTION

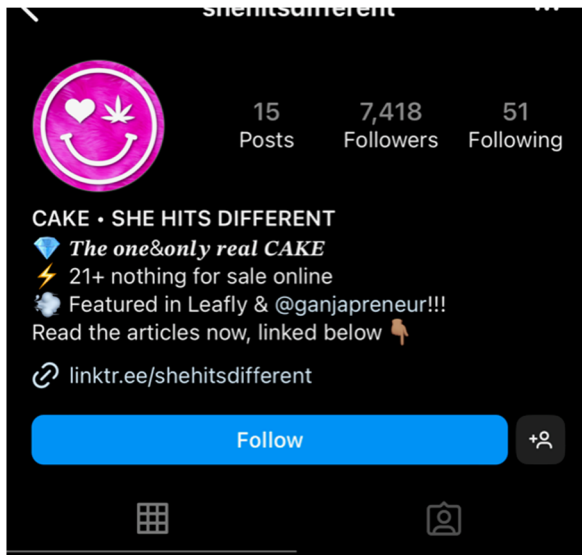
30. Defendants are unlawfully, importing, advertising, marketing, selling, and distributing unauthorized and infringing products by (i) using the brand identity "Cake She Hits Different" and the "Cake" name; and (ii) claiming to be Plaintiff, or at least "authorized distributors" of authentic Cake™ branded products.

31. "Cake She Hits Different" has caught on by exploiting AKF's Cake™ brand name, synonymous with high quality, lawful Delta-8 CBD products, to sell highly potent marijuana products in interstate commerce in violation of Federal

1 law. Defendants knowingly knockoff AKF's Cake™ brand by use of their "Cake
2 She Hits Different" brand. Defendants launched their brand after AKF's Cake™
3 already enjoyed large-scale commercial success across the country. Yet Defendants
4 on websites and in social media openly pretend they are "the real" AKF, or least its
5 "authorized distributors" for all Cake™ branded products. They claim that "Cake
6 She Hits Different" is the "one and only real Cake." The name "Cake She Hits
7 Different" also implies that "Cake She Hits Different" is simply AKF's newest, or
8 next generation, Cake™ product.

9 32. The phrase "she hits different" is a facile explanation for the
10 substitution of unlawful, highly psychoactive Delta-9 THC products for Plaintiff
11 lawful Delta-8 products. Adding nicotine and selling ENDS outside of the law also
12 caters to the "she hits different" crowd. To teenagers and young adults "Cake She
13 Hits Different" also is dangerously appealing. "Cake She Hits Different" is
14 marketed deceptively as being far more potent but still benefiting from the rigorous
15 quality controls and high quality of Cake™ branded products.

16 33. TBH Defendants' social media sites declare falsely that Defendants are
17 the real owners of Cake products, exclaiming "We the one & only real Cake!!"
18 Another social media site, @shehitsdifferent states that the "Cake She Hits
19 Different" brand "is the only real" Cake product. It asks the viewer to pass along
20 the information to others. "Thank you for letting the people know." These
21 statements are undeniably confusing to consumers and misrepresent the rights to
22 the Cake™ brand, *e.g.*:



34. Through the same social media channels, the TBH Defendants claim paradoxically that they are the “Authorized Distributors” of “CAKE”.

35. In fact, “Cake She Hits Different” products are not manufactured by AKF but by the Defendants, who are unregulated “mom-and-pop” manufacturers or sellers, who distribute their infringing products nationally from a concentration of wholesale and retail outlets and shipment fulfillment facilities located at 307 Boyd Street, Los Angeles, California (the “Boyd Street epicenter”). The Boyd Street epicenter is affiliated with Boyd Street Distro LLC, a known counterfeiter.¹ The Boyd Street epicenter has sold both (i) counterfeit CAKE™ branded Delta-8 products *and* (ii) vaping devices marketed under the brand name “Cake She Hits Different” containing highly concentrated Delta-9 psychoactive products.

36. The infringing “Cake She Hits Different” products and their interstate distribution system bear the following characteristics:

- i. The name and packaging are meant to portray a successor product to the Cake™ Delta-8 products, produced by the “same #1” consumer company in the vaping market.

¹ See, e.g., judgment entered in *AK Futures LLC v. Boyd Street Distro LLC*, C.D. Cal. Case No. 8:21-cv-01027-JVS-ADS (ECF No. 58, entered June 15, 2022).



(Authentic Cake™ Product)

(Defendants' Infringing Product)

- ii. The “Cake She Hits Different” product is a Delta-9 THC product derived from marijuana that does not comply with the 2018 Farm Bill restrictions of 0.3 percent Delta-9 THC and derivative from hemp. Instead, it is a psychoactive Delta-9 THC product with little or no Delta-8 ingredients. .
- iii. Unlike certain organic marijuana flower products, the “Cake She Hits Different” consumer product is powerful, potent and concentrated. It starts with black market marijuana -- that is itself unregulated, unlicensed and untaxed -- and reduces the Delta-9 THC psychoactive ingredients into a concentrated oil. This highly potent Delta-9 THC oil is then placed in a vaping device, using typical vaping technology and imported Chinese componentry. In

1 many cases, nicotine is then added, making the consumer product
 2 an “ENDS” (electronic nicotine delivery system) consumer product
 3 heavily restricted by the FDA.

4 iv. The resulting “Cake She Hits Different” consumer product looks
 5 and operates just like a lawful Cake TM branded Delta-8 vaping
 6 device, and it is sold in retailers and distributorships across the
 7 country, on shelves alongside AKF’s CakeTM branded products.

8 37. Defendants have doubled down on their attempts to piggyback of
 9 AKF’s goodwill and reputation by attempting to acquire trademark rights in its
 10 infringing marks. In January 2023, in collaboration with “Atlas Hemp Company
 11 LLC,” a hemp company organized in 2016, “Cake She Hits Different” filed Intent
 12 to Use trademark applications for “Cake She Hits Different,” “She Hits Different”
 13 and “She Hits Different Cake” in IC Classes 5, 18, 25 and 34. By misrepresenting
 14 the existing uses of the mark for illegal Delta-9 products, Defendants are attempting
 15 to defraud and fly under the radar of USPTO examiners.

16 38. Recently, the THB Defendants coordinated with defendant Atlas
 17 Hemp to announce a “partnership” for distribution of “CAKE” branded vaping
 18 products across state lines into Arizona, via a news article that proclaimed
 19 misleadingly: “Highly sought-after California cannabis brand CAKE She Hits
 20 Different has announced its partnership with Atlas Street Ventures to bring CAKE
 21 to the Arizona recreational market, the brand’s third national market.”² The article
 22 goes on to describe “Cake She Hits Different” as follows: “Founded in 2019,
 23 **CAKE** is a multi-state woman and BIPOC-owned lifestyle cannabis brand offering
 24 innovative cannabis products, street wear apparel, and exclusive events. From their
 25 cryo-cured resin vapes to small batch indoor flower, **CAKE** is dedicated to offering
 26 the highest quality and most innovative cannabis products in the industry.” *Id.*

27
 28 ² <<https://www.ganjapreneur.com/cake-arrives-in-arizona-confirms-she-does-hit-different/>> (visited June 12, 2023).

1 (capitalization in original). Defendant Atlas Hemp also displays the infringing
2 “Cake She Hits Different” product line as part of their online “portfolio” and links
3 to www.shehitsdifferent.com.

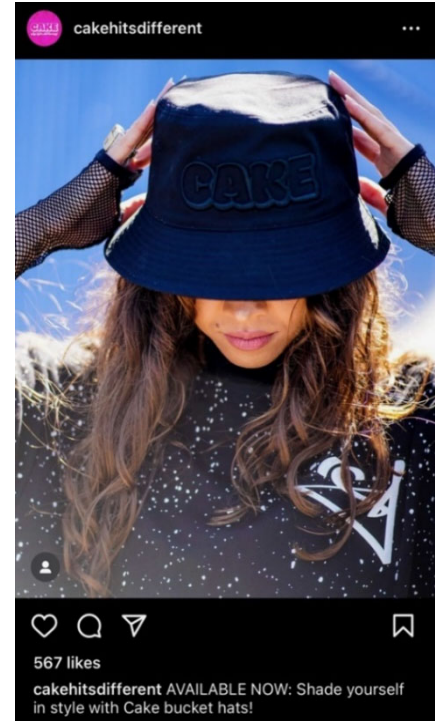
4 39. On information and belief, Defendant TBH owns and operates the e-
5 stores and PayPal accounts linked to the websites www.cakeshehitsdifferent.com
6 and www.shehitsdifferent.com. These websites links to the following social media
7 sites: @shehitsdifferent (Instagram), @shopcakeUSAS (Twitter), and
8 @shehitsdifferent (YouTube) (together, the “**Cake She Hits Different’**
9 **Websites**”). Through the “Cake She Hits Different Websites,” the TBH
10 Defendants openly sell “Cake She Hits Different” branded Delta-9 THC vaping
11 products nationwide, including ENDS.

12 40. On the “FAQ” webpage of www.shehitsdifferent.com, the TBH
13 Defendants boldly claim — in regard to determining whether a product is an
14 authentic or a fake Cake product — that “[a] solution to authenticating Cake is
15 currently in the works. As soon as it is finalized, we will make an announcement
16 and update this response.” Ironically, these same Defendants are passing off their
17 products as AKF’s first-in-time and well-established CAKE brand.

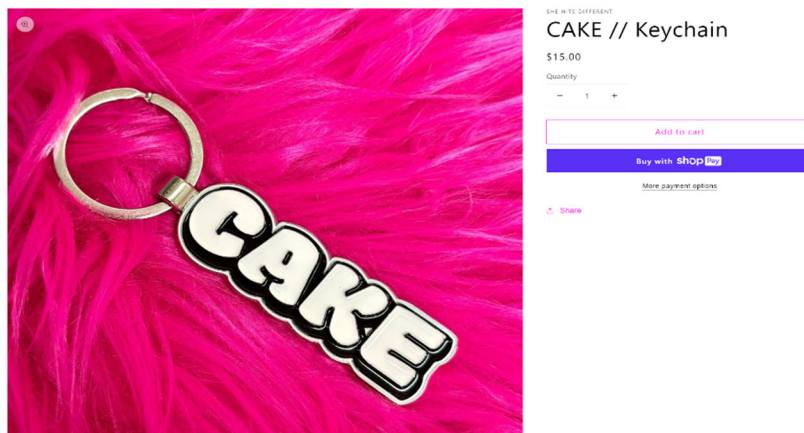
18 41. The TBH Defendants also sell infringing merchandise, from t-shirts to
19 lighters, under their confusingly similar “Cake She Hits Different” brand. These
20 products compete unfairly and are likely to cause consumers to confuse “Cake She
21 Hits Different” merchandise and its Delta-9 THC products as a new generation of
22 Cake™ branded products.

23 42. Defendants even go as far as to sell merchandise and cannabis
24 products using the word “Cake” by itself, which essentially ensures consumer
25 confusion. For example, the TBH Defendants advertise on their social media
26 accounts various products with the word “CAKE” standing alone. In the caption of
27 these posts, Defendants say things such as “Come get yo Cake”, “Friends don't let
28 friends smoke boof. Share Cake”, “Who loves sneaking their Cake pen into the

club?”, “Baddest chick in the game rockin’ that Cake drip”; and “Riding into the future and flying high with Cake.” For example:



(<http://instagram.com/cakehitsdifferent> (visited June 12, 2023).)



(<https://shehitsdifferent.com/products/cake-keychain> (visited June 12, 2023).)

43. Through these activities, Defendants are intentionally deceiving customers into believing that they are receiving authentic Cake™ branded products developed, manufactured, quality controlled, screened and tested by AKF or another party affiliated with, or authorized, licensed, or approved by AKF.

D. DEFENDANTS' CONFUSINGLY SIMILAR BRANDING AND TRADING OFF THE CAKE MARKS HARM TO PLAINTIFF

44. Plaintiff is suffering severe economic hardship and irreparable harm as a result of Defendants' misconduct.

45. Defendants' confusingly similar products under "Cake She Hits Different" and "Cake" have already caused irreparable and confusion across the country. For example, a local news Kansas television news affiliate broadcasted images of infringing "Cake She Hits Different" products while reporting on a story of illegal cannabis products in convenience stores being sold to underage teens. Unfortunately, the story erroneously described "Cake She Hits Different" *as a Delta-8 product*, further underscoring the confusion among the public and the media between AKF's legal products and Defendants' illegal ones.

46. As other news reports foreshadowed, local distributors of Cake™ branded devices in Kansas, Ohio, North Carolina and elsewhere have started to panic that police would also arrest them and seize their substantial investments in Plaintiff's products. AKF has lost millions due to the press attracted by its imposter and serial infringer "Cake She Hits Different" as a result.

47. On May 29, 2023, AKF discovered a webpage hosted on <https://rosedalekb.com>, which conflates "Cake She Hits Different" products with AKF's authentic Cake™ products.³ The website describes a "Cake bar vape" while showing images of AKF's authentic products and Defendants' infringing and unregulated products interchangeably. Defendants' confusingly similar products have created actual consumer confusion, which is causing irreparable harm to AKF.

48. Further irreparable harm is caused by creating an association between Plaintiff's tested, quality-controlled and lawful Delta-8 products with black-market "Cake She Hits Different" products. Their manufacturing, use of unregulated, unlicensed and untaxed marijuana, highly concentrated Delta-9 THC oils, and lack

³ <<https://rosedalekb.com/what-is-a-cake-bar-vape>> (visited May 29, 2023).

1 of any quality controls, are all marketed as high-quality Cake™ branded products.

2 49. Consumers are harmed by Defendants' unlawful conduct because the
3 unregulated, unlicensed and untaxed black-market marijuana products often contain
4 pesticides, toxic fungi, and other contaminants. The oils derived from them include
5 the same ingredients and then are inhaled by young adults and teenagers.
6 Consumers therefore receive inauthentic products of lower quality, less reliable,
7 and less safe than the genuine Cake™ products they expect.

8 50. Besides the health impacts, Defendants' marketing of "Cake She Hits
9 Different" targets minors via social media and other online content, in violation of
10 state and federal law. On certain websites, a simple "click" of the computer mouse
11 is sufficient for a teenager to claim to be age 21 or above to buy "Cake She Hits
12 Different" from websites or social media. Defendants' websites lack any
13 meaningful age-gating screen to view the contents for sale and to initiate a
14 purchase; "shehitsdifferent.com" lacks even the most basic age-gating feature.

15 51. Moreover, all commercial cannabis activities in California require a
16 license from the Department of Cannabis Control ("DCC"). The DCC website
17 provides a search feature for information about the required licenses for any
18 business or individual engaged in commercial cannabis activity.⁴ A recent search
19 for licenses in California for Defendants under the names TBH Supply LLC,
20 Golden Phoenix Holdings Inc., Jason Anthony Longo, and John Anthony Magliana
21 yielded zero results. As such, it appears that Defendants are producing and selling
22 cannabis without a license in California, in violation of state law.

23 52. The illegal and harmful nature of Defendants' products are further
24 evidenced by the actions of the City of Los Angeles and the Los Angeles Police
25 Department, which has investigated and raided retail locations selling and
26 manufacturing illegal Schedule 1 controlled substances under the brand "Cake She
27 Hits Different," as well as counterfeit "Cake" products, resulting in the seizure of

28 ⁴ <<https://search.cannabis.ca.gov>> (visited June 12, 2023).

1 thousands of “Cake She Hits Different” products.

2 53. Additionally, Defendants use websites and social media to ship
3 infringing “Cake She Hits Different” products nationally. Defendants’ websites
4 and social media generate such a high volume on a nationwide basis that it
5 drastically curtails demand for Plaintiff’s authentic Cake™ products, and trades on
6 their goodwill. Selling alternative products associated with Plaintiff reduces the
7 demand for Plaintiff’s products. The “Cake She Hits Different” products also
8 reduce the demand for Plaintiff’s products by catering to consumers who may
9 prefer more potency than allowed by federal law. Indeed, a high volume of “Cake
10 She Hits Different” products are sold or shipped around the country per day,
11 including by Defendants and other Mom-and-Pops in the “Boyd Street epicenter.

12 54. As such, Defendants’ products and activities threaten substantial,
13 irreparable harm to AKF’s brand as well as to consumers, who purchase
14 Defendants’ products wrongly believing them to have been made, tested, and
15 lawfully manufactured by AKF. The inaccurate association consumers and
16 members of the press have drawn between AKF’s lawful products and brand and
17 Defendants’ illicit activities is particularly harmful to AKF.

18 **FIRST CLAIM FOR RELIEF**

19 **(Federal Unfair Competition and False Designation Of Origin,**

20 **15 U.S.C. 1125(A), Against All Defendants)**

21 55. AKF incorporates the allegations in paragraphs 1 through 54 above, as
22 if set forth fully herein.

23 56. Defendants’ advertising, offering for sale, and sale of counterfeit or
24 infringing products bearing or incorporating the “Cake” marks constitute false
25 designations of origin and false descriptions and representations, and are likely to
26 cause confusion, mistake, and to deceive consumers by creating the false
27 impression that AKF and the Cake™ products are affiliated, connected, or
28 associated with Defendants or their goods, or that Defendants’ products are

1 approved, licensed, endorsed, or sponsored by AKF.

2 57. Defendants' acts constitute the use of a false designation of origin, a
3 false description, and a false representation that Defendants' goods are AKF's, are
4 identical to or interchangeable with AKF's goods, or are in some way approved,
5 sponsored, authorized by, or affiliated with AKF.

6 58. With full knowledge of such falsity, Defendants have manufactured,
7 assembled, advertised, offered for sale or sold (and continue to do so) such
8 merchandise in interstate commerce, in such manner as to cause confusion or
9 mistake among the public and to deceive the public, resulting in Defendants' profit
10 and causing AKF great damage and injury.

11 59. Defendants' acts constitute deliberate and intentional violations of
12 Section 43 of the Lanham Act, and justify an award of trebled damages.

13 60. By merit of its actions and conduct, each Defendant either directly
14 caused each cause of action; or acted as an aider and abettor of such violations of
15 law; or acted as a co-conspirator in such violations of law, and so is jointly and
16 severally liable for all damages from each such cause of action.

17 61. Defendants' above-described conduct is causing irreparable harm to
18 AKF and the Cake™ brand, for which there is no adequate remedy at law.

19 **SECOND CLAIM FOR RELIEF**

20 **(California False Advertising, Cal. Bus. & Prof. Code § 17500,**

21 **Against All Defendants)**

22 62. AKF incorporates the allegations in paragraphs 1 through 61 above as
23 if set forth fully herein.

24 63. Defendants have knowingly and willfully made false or misleading
25 statements in connection with the sale of their inauthentic products.

26 64. In advertising and promoting their products, Defendants knew or, with
27 the exercise of reasonable care, should have known, that their statements were false
28 and misleading.

1 65. By merit of its actions and conduct, each Defendant either directly
2 caused each cause of action; or acted as an aider and abettor of such violations of
3 law; or acted as a co-conspirator in such violations of law, and so is jointly and
4 severally liable for all damages from each such cause of action.

5 66. As a direct, proximate, and foreseeable result of Defendants making
6 these false and misleading statements, AKF has suffered, and will continue to
7 suffer, irreparable harm to its individual brand, reputation and goodwill. AKF has
8 no adequate remedy at law to compensate for these substantial injuries and is thus
9 entitled to injunctive relief.

10 67. As a direct, proximate, and foreseeable result of Defendants making
11 these false and misleading statements, AKF has suffered and will continue to suffer
12 monetary damages in an amount to be proven at trial.

13 68. This cause of action enforces one or more important rights affecting
14 the public interest and confers a significant benefit on the general public, or at least
15 the large class of persons interested in Delta-8 products, and so Plaintiff AKF is
16 entitled to an attorney's fee award.

17 **THIRD CLAIM FOR RELIEF**

18 **(California Unfair Competition, Cal. Bus. & Prof. Code § 17200 *et seq.*,**
19 **Against All Defendants)**

20 69. AKF incorporates the allegations in paragraphs 1 through 68 above, as
21 if set forth fully herein.

22 70. As stated above, Defendants' conduct is likely to cause confusion as to
23 the origin, authorization, authenticity, and sponsorship of the vaping products being
24 manufactured, imported, advertised, sold, and distributed by Defendants. The
25 above-described conduct of Defendants is intended to produce and has produced
26 substantial profits for Defendants at the expense of AKF and to the detriment of the
27 integrity of the Cake™ brand.

28 71. By merit of its actions and conduct, each Defendant either directly

1 caused each cause of action; or acted as an aider and abettor of such violations of
2 law; or acted as a co-conspirator in such violations of law, and so is jointly and
3 severally liable for all damages from each such cause of action.

4 72. Defendants' above-described conduct constitutes unlawful and unfair
5 business practices in violation of California Business & Professions Code sections
6 17200 et seq.

7 73. AKF has lost money and suffered substantial injury as a result of
8 Defendants' wrongful acts. Defendants' misconduct also has caused, and is
9 continuing to cause, irreparable injury to AKF for which there is no adequate
10 remedy at law.

11 74. This claim for relief enforces one or more important rights affecting
12 the public interest and confers a significant benefit on the general public, or at least
13 the large class of persons interested in Delta-8 products, and so Plaintiff AKF is
14 entitled to an attorney's fee award.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff relief in its favor and against Defendants as follows:

17 A. That Defendants, their officers, directors, agents, employees,
18 representatives and all persons, firms and corporations in active concert or
19 participation with any of them, be preliminarily and permanently enjoined from
20 infringing, distributing, or otherwise using without AKF's authorization the Cake™
21 marks and any AKF's copyrighted designs, by manufacturing or causing to be
22 manufactured, importing or causing to be imported, reproducing or causing to be
23 reproduced, purchasing or causing to be purchased, distributing or causing to be
24 distributed, advertising or causing to be advertised, or offering for sale or selling,
25 any infringing products bearing the Cake™ marks, or any confusingly similar
26 mark;

27 B. Judgment in favor of AKF that Defendants competed unfairly with
28 AKF and employed false designations of origin including product packaging and

1 trade dress, all in violation of AKF's rights under 15 U.S.C. § 1125 and California
2 Bus. & Prof. Code § 17200 et seq.;

3 C. Judgment in favor of AKF that Defendants made false and misleading
4 statements and falsely and misleadingly advertised their infringing products, in
5 violation of AKF's rights under California Bus. & Prof. Code § 17500;

6 D. On the First and Second Claims for Relief, AKF be awarded up to
7 three times the amount of actual damages sustained by it as a result of Defendants'
8 acts, including any lost profits sustained by AKF or profits unlawfully realized by
9 Defendants;

10 E. On the First and Second Claims for Relief, Defendants be ordered,
11 pursuant to Section 34 of the Trademark Act, 15 U.S.C. § 1116, to file with the
12 Court and serve upon AKF's counsel, within 30 days of the entry of the injunctions
13 and orders prayed for herein, a written report setting forth under oath and in detail
14 the manner in which they have complied with the injunctions and orders requested
15 herein;

16 F. On all claims for relief, (i) Defendants be required to deliver
17 immediately to AKF for destruction all infringing merchandise bearing the Cake™
18 marks, or any confusingly similar mark or designation of origin; and (ii) the seizure
19 and impoundment of the same as may be authorized by Section 34 of the
20 Trademark Act, 15 U.S.C. § 1116(d)(2) to (11), Federal Rules of Civil Procedure
21 64 and 65, and other relevant court rules or statutes;

22 G. On all claims for relief, (i) Defendants further be required to deliver to
23 AKF for destruction all computer files, digital files, computer discs, master copies,
24 print molds, dye cuts or other materials or instrumentalities used to manufacture
25 infringing merchandise bearing the Cake™, as well as all labels, signs, prints,
26 packages, receptacles, promotional and other material in their possession, custody
27 or control that display or promote infringing merchandise bearing the Cake™
28 marks, or any confusingly similar mark or designation of origin; and (ii) the seizure

1 and impoundment of the same as may be authorized by Section 34 of the
2 Trademark Act, Federal Rules of Civil Procedure 64 and 65, and other relevant
3 court rules or statutes;

4 H. On all claims for relief, Defendants be ordered to provide an
5 accounting of all revenues and profits obtained by them as a result of their unfair
6 competition and other violations, as alleged herein;

7 I. On the First Claim for Relief, AKF be awarded its attorneys' fees and
8 costs pursuant to 15 U.S.C. § 1117;

9 J. On the Third Claim for Relief, AKF be awarded its attorneys' fees as
10 private attorney general pursuant to California Code of Civil Procedure § 1021.5;

11 K. On the Third Claim for Relief, the Court grant restitution to AKF,
12 including the disgorgement of all monies obtained by Defendants through the
13 unlawful sales or distribution of, unauthorized or infringing goods;

14 L. On the First Claim for Relief, the Court order that websites and social
15 media be taken down, and domain names forfeited or transferred to Plaintiff,
16 pursuant to 15 U.S.C. § 1125(d), or as may be authorized by Section 34 of the
17 Trademark Act, Federal Rules of Civil Procedure 64 and 65, and other relevant
18 court rules or statutes; and

19 M. Such other and further relief the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff
22 AKF demands a jury trial on all claims for relief averred herein.
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1 Dated: June 12, 2023

MORRISON & FOERSTER LLP

2 -- AND --

3 THE FROST FIRM

4
5 By: /s/ Benjamin J. Fox

6 Benjamin J. Fox

7 *Attorneys for Plaintiff*
8 *AK Futures LLC*
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